

Bank of India & Ors.

v.

Pankaj Srivastava

(Civil Appeal No. 6837 of 2023)

30 April 2024

[J.K. Maheshwari and Sanjay Karol, JJ.]

Issue for Consideration

Whether there is relevant material on record that could be construed as contemplation of the disciplinary proceedings against the deceased employee which would *prima facie* result in award of major penalty, and thereby bar the Respondent's claim for compassionate appointment.

Headnotes[†]

Compassionate Appointment – No relevant material to contemplate that the initiation of disciplinary proceedings would lead to *prima facie* award of major penalty prior to the death of the deceased employee:

Held: 1. Upon reviewing Clause 10(iv) of the Scheme prevalent for for grant of compassionate appointment vide Branch Circular No. 92/64 dated 17.03.1999 and the amended directions from the bank's Board Meeting on 20.06.2002, it is clear that even if disciplinary proceedings against an employee were pending or under contemplation at the time of their death, which could *prima facie* lead to a major penalty, the dependents of the deceased employee are still not entirely excluded from consideration for compassionate grounds and it was subject to government approval. [Paras 6, 8, 9]

2. The court further noticed that the deceased employee was not placed under suspension, initiation, or contemplation of the disciplinary proceedings before his death and the chargesheet was also not issued. It is merely said that the chargesheet was under preparation. Therefore, in absence of any relevant material disclosed it cannot be presumed to be case of *prima facie* award of major penalty on account of contemplation of disciplinary proceedings. Claim for appointment of Respondent on compassionate ground directed to be considered by the Petitioner. [Paras 9, 10]

Digital Supreme Court Reports**Case Law Cited**

State of Himachal Pradesh and Anr. v. Shashi Kumar [\[2019\] 2 SCR 432](#) : (2019) 3 SCC 653 – referred to.

List of Acts

Constitution of India.

List of Keywords

Service Law; Disciplinary proceedings; Compassionate Appointment.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6837 of 2023
From the Judgment and Order dated 26.05.2022 of the High Court of
Judicature at Allahabad, Lucknow Bench in SPLAD No. 42 of 2022

Appearances for Parties

Rajesh Kumar Gautam, Anant Gautam, Samir Mudgil, Dinesh Sharma,
Ms. Shivani Sagar, R. P. Daida, Advs. for the Appellants.

Ardhendumauli Kumar Prasad, Sr. Adv., Rohit K. Singh, Pritam
Bishwas, Prakhar Srivastava, Ms. Ananya Sahu, Advs. for the
Respondent.

Judgment / Order of the Supreme Court**Order**

1. Being aggrieved by the judgment of Single Bench, allowing the writ petition of the respondent and directing the bank to consider his claim for appointment on compassionate ground; confirmed in appeal by the Division Bench, this appeal has been preferred.
2. The facts in shorn are, the respondent filed a writ petition seeking directions to consider his case being eligible and grant compassionate appointment on the post of Clerk with immediate effect on account of death of his father during course of employment. Prayer was also made to quash the order dated 20.06.2002 issued by the bank.
3. In the short counter-affidavit filed by the bank, the scheme prevalent for grant of compassionate appointment vide Branch Circular No. 92/64 dated 17.03.1999 was referred, in particular, Clause 10(iv) thereof. Further reference was made regarding revised guidelines

Bank of India & Ors. v. Pankaj Srivastava

vide letter No. 18/80/97-IR dated 19.02.2002 delegating the authority to the bank for appointment of dependents of deceased employee on compassionate ground relating to cases involving major penalty and not required to be referred to Government of India for clearance. Apropos the letter dated 20.06.2002 issued by Bank of India in Board Meeting, indicates that the Executive Director of the Bank is directed not to consider those cases which involve award/consideration/contemplation of major penalty to employees on account of fraud/forgery/misappropriation or due to any vigilance angle/negligence. The bank had also filed a supplementary affidavit before the writ Court which was also placed on record.

4. Learned Single Bench proceeded on the premise that as per the contents of the supplementary affidavit, no charge sheet was served upon prior to the death of the employee, and opined that the disciplinary proceedings were neither under contemplation nor initiated, however, the defence taken was not found plausible in terms of the policy.
5. On filing intra court appeal by bank, the High Court referred the scheme dated 17.03.1999 and analyzed the purport of Clause 10(iv) and the letter of the Bank of India in Board Meeting dated 20.06.2002. In reference thereto, the Court observed that the deceased was neither punished with major penalty nor such penalty was in contemplation against him prior to his death. It is said that father of the respondent died on 28.07.2000 and till his death he was not placed under suspension either due to contemplation or initiation of the departmental proceedings. As per averments in the counter-affidavit, the charge sheet was not issued, except to say that it was under preparation. However, the Division Bench in the impugned judgment has opined as under: -

“In our considered opinion, merely because the charge-sheet was said to be under preparation before the death of the father of the respondent – petitioner, it cannot be said that any major penalty was in contemplation. Thus, the aforesaid submission made by the learned counsel for the appellants does not appeal to this Court which is hereby rejected.”

The Bench also denied to accede the plea raised relying on the judgment of [State of Himachal Pradesh and Anr. Vs. Shashi Kumar](#) (2019) 3 SCC 653 and observed that in the present case, there is no delay either in applying or taking recourse before the

Digital Supreme Court Reports

Court for appropriate directions to appoint the writ petitioner on compassionate ground and thus, accepted the reasonings as given by learned Single Judge.

6. Having heard learned counsel for the parties and on perusal of the scheme dated 17.03.1999, in particular, Clause 10(iv), which specifies the exceptions to recruitment of the dependents of the employees who died in harness, is relevant, and extracted for ready reference as under: -

10(iv). In case where the deceased employee had been awarded minor penalty or disciplinary proceedings against the employee was pending or contemplated at the time of death of the employee, which would prima-facie have resulted in award of minor penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the bank's board. In case where the deceased employee had been awarded major penalty or disciplinary proceedings against the employee was pending or contemplated at time of death of the employee, which would prima-facie have resulted in award of major penalty, appointment on compassionate grounds of the dependents will be considered with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).

7. The afore-quoted clause specifies two exceptions, first, in the cases where minor penalty had been awarded or disciplinary proceedings against the deceased employee was pending or contemplated at the time of death of employee which would *prima facie* result in award of minor penalty, there would not be any impediment to consider the case of dependents for compassionate appointment with the approval of Bank's board. While in the second exception it is clarified that where the deceased employee had been awarded major penalty or the disciplinary proceedings against the employee was pending or contemplated at the time of death of employee which would *prima facie* result in award of major penalty, the consideration of appointment on compassionate ground of the dependents of such employee may be made with the approval of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division).
8. The letter of the Bank of India in Board Meeting dated 20.06.2002 has been relied upon which was issued in reference to the revised

Bank of India & Ors. v. Pankaj Srivastava

Government guidelines vide letter F. No. 18/80/97-IR dated 19.02.2002. The relevant portion of the letter dated 20.06.2002 is reproduced as thus: -

“Scheme for appointment of dependents of deceased employees on compassionate ground cases involving major penalty proceeding referred to Government of India for clearance as per earlier Government guidelines vide its letter F. No. 18/80/97-IR dated 03.11.1998 Revised Government guidelines vide letter F. No. 18/80/97-IR dated 19.2.2002 delegating authority to Bank in the above cases.

Apropos the directive given at the Board Meeting held on 20.04.2002 that the Board would decide on case to case basis upon resubmission of the above referred 12 individual cases to it, memorandum No. P/A/SSG/2002-03/212 dated 27.05.2002, together with annexures, embodying the factual details of the said 12 cases, submitted by Personal Department, was considered.

The Board **DIRECTED** that employment on compassionate ground need not be considered in cases where major penalty was awarded considered/contemplated to employees on account of fraud/forgery/misappropriation, on account of any vigilance angle/negligence and authorized the Executive Director to consider only those cases not involving the above, for employment of dependent of deceased employees on compassionate ground.

Stamp
Bank of India
Board of Meeting
20.06.2002”

9. On perusal of Clause 10(iv) of the Scheme and the amended directions in bank's Board Meeting dated 20.06.2002, it is luculent that even in cases where the disciplinary proceedings against the employee were pending or were under contemplation prior to his death which would *prima facie* result in award of major penalty, the case of the dependents of the deceased employee on compassionate ground has not been completely refused from consideration and it was subject to approval of the Government. In compliance of government circular dated 19.02.2002, the bank in its Board of Meeting dated

Digital Supreme Court Reports

20.06.2002 authorized the Executive Director of the Bank and said that the cases for appointment on compassionate ground shall not be considered where the major penalty was awarded/contemplated to employee on account of fraud/forgery/misappropriation and on account of any vigilance angle/negligence. The above letter does not debar the cases where disciplinary proceedings were pending or were in contemplation against the employee at the time of death which would *prima facie* result in award of major penalty. In our view, the decision of the bank in its Board Meeting dated 20.06.2002 is logical whereby the cases wherein the penalty was either awarded or contemplated to the deceased employee was not required to be considered. The letter is silent with respect to contemplation of the disciplinary proceedings against the deceased employee which would *prima facie* result in award of major penalty. In the facts of the case in hand, the deceased employee was not placed under suspension on account of contemplation of the disciplinary proceedings and the charge sheet was also not issued. It is merely said that the charge sheet was under preparation, however, in absence of any relevant material disclosed, it might not be presumed to be a case of *prima facie* award of major penalty on account of contemplation of disciplinary proceedings. Therefore, in our considered opinion, reasoning as given in the judgment by the Division Bench is completely in consonance with the spirit of the Circular and it rightly affirmed the decision of the Single Bench to consider the case of the respondent for grant of compassionate appointment.

10. In view of the above discussion, we do not find any merit in the contention to interfere with the order passed by the Single Bench and the Division Bench of the High Court. Accordingly, this appeal stands dismissed, being bereft of any merit. However, we direct that the order passed by the High Court be now implemented within a period of four months from the date of the order.

Result of the case: Appeal Dismissed.